

(Niagara Falls, New York)

April 24, 1966

Mystery Spy or Freedom

By ORR KELLY

IN THE HIGH-CEILINGED main courtroom of the Federal building in Baltimore, Chief Federal Judge Roszel C. Thomsen listened intently as the lawyers before him argued their case.

On the surface it was a routine case: Civil Action No. 15952, a complaint in damages for slander, Erik Heine, plaintiff, v. Juri Raus, defendant. It seemed to be a petty dispute between two members of the Estonian community.

But at one point, Judge Thomsen leaned forward and said:

"If further information were revealed, it might expose the entire U.S. counter-espionage apparatus."

Clearly Heine v. Raus was something special.

OVER THE last 17½ months, the file on Civil Action No. 15952 has grown into a documented tale of intrigue as gripping and as puzzling as any spy story.

The plaintiff, Erik Heine, is a 46-year-old Estonian. He now lives in Rexdale, Ont., a suburb of Toronto, and by his own story of his life is one of the great freedom fighters of all time. On three separate occasions, he said in his suit, Raus accused him of being a Communist, and an agent of the K.G.B., the dread Soviet secret police.

Raus, the man accused of slandering Heine, is an admitted agent of the Central Intelligence Agency and, in CIA's own words, "was instructed to disseminate such information . . . so as to protect the integrity of the Agency's foreign intelligence sources."

RAUS IS 39, lives at 6508 Osborne Rd., Hyattsville, Md., and is an engineer for the Bureau of Public Roads and national commander of an Estonian veterans' organization, Eesti Vabadussõjalaste Liit (the Legion of Estonian Liberation, Inc.).

Heine is asking \$10,000 in compensatory damages and \$100,000 in punitive damages in the suit, filed in the U.S. Dis-

EDITOR'S NOTE: If you think Ian Fleming's stories of spies and duplicity and 007's activities are exciting, the story of a real-life trial going on right now might prove once again that truth is stranger than fiction.

Erik Heine of Rexdale, Ont., is suing a man named Juri Raus of Hyattsville, Md., for \$10,000 in compensatory damages and \$100,000 in punitive damages because Raus called Heine an agent of the Russian secret police, the KGB.

The problem is, Raus at the time was an agent of our own Central Intelligence Agency — and his statement was made in the line of duty. And further, the information about that statement is shrouded in secrecy.

trict Court in Baltimore on Nov. 6, 1964. He is represented by two Washington attorneys, Ernest C. Raskauskas and Robert J. Stanford.

The importance of the case began to emerge when, early in January, 1965, Raus' answer was filed through Hogan & Hartson, one of Washington's major law firms. His attorneys were Paul R. Connolly, a top trial lawyer, and E. Barrett Prettyman Jr., former assistant U.S. attorney general, former White House special assistant and a major figure in negotiations for the release of the Bay of Pigs prisoners.

The statements he had made about Heine, Raus said in his answer, were made in his official capacity as commander of the Estonian Legion and, he added, he "was in possession of responsible information received by him from an official agency of the United States government." He did not mention the CIA at that time.

Raus' charges created a bitter split in the Estonian community in North America, which numbers some 20,000 to 30,000 persons. August Kuklane of 4714 St. Thomas Ave., Baltimore, a contractor and Maryland commander of the Estonian Legion, recalled in a recent interview his reaction when he first heard the charges.

"I have such a feeling as

someone hit me on head," he declared.

KUKLANE SAID he put the issue very forcefully to both men. "I pointed my finger at Heine and I told him, 'You know what that means. If you are guilty, it means the rope.' And I told Yuri Raus, 'If this man is innocent, you have done a deadly sin.'"

Members of the Estonian community urged Heine to file suit so that the truth or falsity of the accusations could be learned.

For Judge Thomsen the case has posed a legal problem unlike any a U.S. judge has ever faced. Raus has claimed absolute privilege because, he says, he was acting as an official of the U.S. government. Further, he is bound by a secrecy agreement with the CIA which apparently prevents the court or Heine's lawyers from inquiring into the nature of his duties as a CIA agent.

In a hearing on March 11, Connolly summed up the dilemma faced by Judge Thomsen:

"If indeed the plaintiff is an innocent law-abiding citizen, a dedicated fighter for his homeland, if he is a person who has all his life opposed the Soviet Communist conquest of his homeland and has fought So-



ERIK HEINE

Continued

viet principles and Americanism has been said of him to damage his reputation. It is indeed a monstrous thing that has happened to him.

"On the other hand, if this man posing as a freedom fighter, posing as an Estonian partisan against Soviet rule in his homeland, if he has in fact been a Soviet agent, then what has happened to him is no more than any American I think would believe was his just desserts.

"The difficulty in approaching such a case is that at the outset we do not know which is true, and if we could try the issue of whether it is true or not, perhaps that particular issue would be satisfied; but the law and the Supreme Court itself has established a clear-

cut principle that prevents inquiry . . ."

UNDER STRICT instructions from the CIA, Raus is prevented from telling his side of the story. In a court hearing last week, his attorney, Prettyman, said Raus might be even more eager than Heine to have the full truth made public. But at this time only Heine's story is available.

Long before the CIA involvement in the case was made public, Connolly and Prettyman began the preparation of their defense by taking a deposition from Heine. They questioned him on Feb. 27 and March 1, 2, and 3, 1965. The 924-page transcript of the deposition, now on file in the court, gives Eerik Heine's detailed story of his life.

According to Heine's story he was captured by the Russians three times, escaped twice, spent some seven years in Russian prisons and once made a daring 5,000 mile trip across the north of Russia while there was a price on his head as a guerrilla fighter.

The line of questioning during the taking of the deposition indicates the attorneys might have a question as to whether the man who calls himself Eerik Heine is, in fact, really Eerik Heine. One version of the stories circulating about him, he himself said, is that the real Eerik Heine died in the forests of Estonia as a freedom fighter and that he has been replaced by a superbly clever Soviet agent.

"They say I am not I," he commented.

THE FOLLOWING account of the life of Eerik Heine, then, is based on the deposition and on

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a lengthy interview with the plaintiff in Rexdale, where he lives in a four-bedroom, \$18,000 bungalow with his wife, who is a registered nurse, and a 70-year-old woman he identifies as his mother.

Eerik Heine was born Sept. 15, 1918 in Tartu, Estonia, to the wife of the owner of northern Europe's largest piano manufacturing plant.

He first came to public attention in August of 1940 when the Communists, in the process of taking over the country, hung the Red flag from the Tartu city hall.

"When they raised the Red flag on the city hall, I went with a couple of my young friends to try to pull that down, the Red flag, and put up our Estonian tri-color," he says in the deposition.

"We struggled there in these corridors and in the tower there. We were pulled down by these Communists and on that day when we struggled there, the three, four youths that we were, thousands of people gathered around when news got out that we were there, thousands of people gathered around that city hall, and they began to sing our national anthem and these Communists were struck with terror and we used that moment to slip out of there, the crypt, and we were free, but not for long."

The NKVD put Heine's parents under house arrest and spread the word that they would be killed if he did not surrender. He gave himself up.

WHEN ASKED about his experiences at the hands of an NKVD major named Marrazian, he replied:

"Methods of torture, the beatings, that was the simplest and easiest, but the worst agony was that they used electricity, especially on the sexual organs.

"And two times I was taken out from my prison and led to a nearby forest where they had a secret execution place, and two times they, you know, made a mock killing or mock shooting. They put me on the edge of that grave, and then, you know, first time only they had rifles on their shoulder, and I waited for when it comes, and nothing comes; the second time they even fire, but not at me, but to subdue me so that I tell about these activities they suspected I was a part of."

While Heine was in the Soviet prison in Tartu, his parents emigrated to Germany—this was during the period of peace between the USSR and Germany established by the Molotov-Ribbentrop Pact—and he and several other prisoners were exchanged for German

CIA-RDP75-00770R000100180004-1

Communists in April 1941. When war broke out between Germany and the USSR, Heine was trained as an officer by the Germans, had his blood type tattooed inside his left arm and was assigned to an Estonian unit of the Waffen SS—the crack frontline troops of the German army. After service in the Ukraine, he was sent back to Estonia and became a member of the political police—which, he insists, was sharply distant from the Gestapo.

IN 1944, he returned to the army and fought in the front lines.

He was asked during the taking of the deposition how many Russians he had killed.

"You know, sir," he replied, "we were not that kind of people that kept records like the Russians about their killings. I may say, maybe a hundred, maybe 200, who knows"

But the overwhelming firepower of the Soviets proved too much and the front in the southern part of Estonia—near his home town of Tartu—collapsed.

Heine was captured and spent the winter of 1944-45 in a Russian slave labor camp where, he said, the prisoners lived in subhuman conditions and where death from beatings, starvation and murder by criminal prisoners was an everyday occurrence.

At the height of a snowstorm in March of 1945, he said, he crawled through the four barbed wire fences surrounding the ers called the "death zone"—prison—across what the prisoners and escaped. From there, he walked and rode trains across northern Russia, heading always toward the west, toward Estonia.

To keep from starvation, he said, he stole food—and it was the theft of a loaf of bread that led to his capture outside of Leningrad.

He was transferred with a group of Estonian prisoners to a camp in Estonia, from which he escaped into the forests, where he became a member of a small guerrilla band, he said.

UNDER QUESTIONING by Raus' attorneys, he told how he became a trusted member of the guerrilla band:

"You have to know that to get full member of a guerrilla force you have to kill with your own hands a government officer or soldier and that I did that same year. I killed a district of VUjandi officer . . ."

Q— When did you have this killing when you had to do it with your bare hands?

A— He was still alive, wound-

ed severely, and I shot him myself.

Q— You then went up to the car and shot him?

A— Yes.

Q— Where?

A— In the face.

In August of 1947, Heine said in the deposition, he went alone 2,500 miles across Russia in an attempt to rescue an Estonian woman from a Siberian deportation camp. But, he said, she was afraid to accompany him, so instead, he brought four adults and two children safely back to Estonia.

In 1950, he said, while he was attending a music festival, agents of the Soviet secret police pounced on him.

He was sentenced to death he said, but the sentence was commuted to 25 years in prison and he spent the next six years in a variety of Russian prisons. What is publicly known about what happened to Heine during those years comes almost entirely from his own story as told in the deposition. He was released as a prisoner of war in November 1954 and his mother was then living in Canada and joined her there in 1957.

He was also reunited there, he said, with Elsa Varres, a tall, handsome woman with dark blonde hair and flashing blue eyes, whom he had not seen since they were in a camp in Germany, and they were married in Toronto on Dec. 28, 1957.

HEINE'S LIFE during the next seven years was almost totally devoted to the cause of Estonian liberation.

"I had a feeling God Almighty had something for me," he said in an interview, "—some kind of mission—some kind of work put upon me. Otherwise why save me through all those horrible things—all hunger, pain and torture?"

In a series of interviews, he told his life story to Arved Viirlaid, an author and the husband of his wife's sister. A fictionalized account of his life, which Heine refers to as "my autobiography," has been published in both Estonian and English under the title, "Rain For the River," and it has helped to make Heine well known among Estonians.

The only reference to that incident in the court papers now on file, however, was when Heine was asked, during the taking of the deposition, if he had heard of the man, identified as Arthur Hamann. He said he had read about him in the Estonian newspapers, but had never seen or corresponded with him.

Continued

HEINE'S ACTIVITIES as an advocate of Estonian liberation came to a climax of sorts in the spring of 1963.

In March of that year, he completed a 2½-hour, 16mm film about the Estonian guerrillas, called "Legendi Loojad" or, in English, "Creators of Legend."

He then toured the United States, showing the movie and lecturing primarily to Estonian audiences, on his experiences as a guerrilla. It was shown in Baltimore May 18 and in Washington May 19, 1963.

The only hope for Estonia, he told his audiences, is the complete overthrow of the Communist world.

"I am," he said during a recent interview in the booklined living room of his home in Toronto, "a Goldwater man."

It was during his tour of the United States, he said, that he first began to hear the rumors that he was a K.G.B. agent although the first of the three specific instances of alleged slander cited in his complaint occurred in New York on Nov. 9, 1963.

The beginning of Heine's lecture tour coincided with another incident that brought him into prominence in the Estonian community. Although he describes himself as "a fighting man, not a politician," he ran for a position on the 35-member board of the Estonian Cultural Council, the central agency for Estonian groups in Canada, in May, 1963.

He received 400 to 500 votes more than his closest competitor—he terms it a "landslide"—and could then expect to be named the President of the council. But, because of the rumors about him, he said, he declined that post. He is, however, one of some 60 candidates in another election to be held next month.

WITH FINANCIAL help from Estonian acquaintances, he was eager to learn the truth or falsity of the charges against him. Heine filed suit in November of 1964.

He asserts that Juri Raus accused him of being a Communist and a K.G.B. agent on Nov. 9, 1963 at a meeting of the board of the Legion of Estonian Liberation in New York; on July 4, 1964, at an Estonian gathering at Laurel Acres, Pasadena, Md., and on or about Sept. 4, 1964 at a gathering at Estonian House in Baltimore.

In his answer, filed on Jan. 3, 1965, Raus admitted that he had said, at the New York meeting "that he was in possession of responsible information received by him from an official agency of the United States government to the effect that the plaintiff was a Soviet agent or collaborator . . ."

He also admitted speaking to Kuklane, the Baltimore Estonian, on an earlier occasion than the dates mentioned in the suit "in substantially the same terms," but he denied making the statements at the times mentioned in the suit.

In an affidavit filed a few days later, Raus said that he was born and reared in Estonia, that he was 38 years old, that he came to the United States as an emigre in 1949 and that he is now a naturalized citizen.

At that time, he said, he was a GS-12 in the Bureau of Public Roads at a salary of \$10,605 a year and that he was married and had two children, aged five and two. His only other income, he said, was \$1,000 a year received as a captain in the Army reserve. No mention of the CIA appears in the court record until January of 1966.

THE CIA turned up after the taking of the Heine deposition in February and March of last year. That was on Jan. 11 of this year, when Raus' attorneys filed a motion for summary judgment. They claimed he had absolute privilege because he was acting as an official of the United States government.

Attached to the motion was a one-page affidavit signed by Richard Helms, deputy director of Central Intelligence, in which he said:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Juri Raus, was in possession of information furnished to him by the Central Intelligence Agency and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the Agency on behalf of the United States."

The motion filed by Prettyman and Connolly said:

"Under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff. As a matter of law,

the defendant is entitled to judgment."

They were on good legal grounds. In a number of cases the Federal courts have held that it is in the country's interest to protect government officials from libel or slander suits for things they say in the course of their official duties—even if they speak falsely and with malice.

IN THEIR reply, Heine's attorneys Raskauskas and Stanford, argued that it was unfair to permit the defendant to add a totally new element to his defense more than a year after the suit had been filed.

"He leads this Court to believe that he has extremely limited resources from which to conduct his defense and nowhere does he suggest, that in the event that his then assisting defenses proved to be fictitious, he has the majesty of the United States, the money of the CIA, and the mockery of absolute privilege hovering on a standby basis, to be thrust upon this Court and the plaintiff in case of need," they said.

Judge Thomsen seemed deeply disturbed by the dilemma he faced. At one point, he said:

" . . . I think that the plaintiff is entitled, assume the plaintiff is a Communist, assume he is everything you say, everybody has some rights in this country . . ."

ON APRIL 4, responding to the concern expressed by the Judge, Raus' attorneys filed a new affidavit signed by Helm in which he gave more details of Raus' employment by the CIA. He said:

"For a number of reasons, including his past history and his position as National Commander of the Legion of Estonian Liberation, the defendant has been a source to this Agency of foreign intelligence information pertaining inter alia to Soviet Estonia and to Estonian emigre activities in foreign countries as well as in the United States.

"The Central Intelligence Agency has employed the defendant from time to time—concurrently with his duties on behalf of the Bureau of Public Roads—to carry out specific assignments on behalf of the Agency . . ."

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant was furnished information concerning the plaintiff by the Central

Intelligence Agency and was instructed to disseminate such information to members of the Legion so as to protect the integrity of the Agency's foreign intelligence sources. Accordingly, when Juri Raus spoke concerning the plaintiff on the occasions about which complaint is made, he was acting within the scope and course of his employment by the Agency on behalf of the United States . . ."

"After a personal review of the Agency's activities pertaining to Eerik Heine, I have reached the judgment on behalf of the Agency that it would be contrary to the security interests of the United States for any further information pertaining to the use and employment of Juri Raus by the Agency in connection with Eerik Heine to be disclosed . . ."

"I am herewith directing Juri Raus to make no further disclosures concerning his employment by the Agency or relating to this matter without specific authorization by proper officials of the Central Intelligence Agency."

ATTACHED TO the affidavit was a secrecy agreement signed by Juri Raus on May 29, 1963 in which he promised never to divulge information obtained because of his association with the CIA without written permission.

During the hearing last week, Judge Thomsen seemed several times to be on the verge of granting Raus' motion for summary judgment based on his claim of absolute privilege. But he ended the hearing with a request for one more attempt to see if the CIA is able to provide any further information.

What is the whole truth about Eerik Heine?

In the more than a thousand pages of the court record, there is no satisfactory answer. At this stage of the case, a fact, Raus, relying on the defense of privilege, has not even asserted that the things he said about Heine are true.

Because of the secrecy surrounding the case, the full story of Eerik Heine, Juri Raus and the CIA may never be told.

Washington Star, 2/14/66

Sunday

INTERPRETIVE REPORT

The Raus-Heine Case Immunity Issue

By ORR KELLY
Star Staff Writer

Can an agent of the Central Intelligence Agency claim the same privilege against a slander suit as a claims representative for the Department of Health, Education and Welfare or a customs agent?

The attorneys for Juri Raus, who has been identified as a CIA agent in a slander suit brought against him by a fellow Estonian emigre, have argued that the protection in his case is even more important than in other cases they cited.

The other cases, in which the courts held that an official of the government has absolute privilege against a suit for slander, they said, were "fairly pedestrian matters."

"Of much greater concern to the interests of the United States," they added, "is the nether world of international conspiracy, espionage and statecraft."

Key Difference

But the attorneys for Eerik Heine, a 46-year-old resident of Rexdale, Ont., who said Raus falsely called him a Communist and a KGB agent, have challenged Raus' attorneys to show "under what authority the organization for which defendant Juri Raus was allegedly employed, is authorized to issue maledictions in a course of its duties."

This, in fact, seems to be the key difference between the case of Heine v. Raus and the other cases. In those, various government officials made slanderous statements as a by-product of their other duties.

In this case, according to two affidavits filed by the CIA, Raus' specific assignment was to make derogatory statements about Heine.

In a 1958 case, Judge Learned Hand spelled out the reasons for protecting officials against slander suits.

"It goes indeed without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery.

Dampener Effect Cited

"The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to a burden of a trial and to the inevitable danger of its being dampened the

ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties . . ."

In this case, Raus' statements were apparently not a case of venting his spleen but of carrying out a directive by his employers.

Whether this case is indeed different from the others is the problem facing Chief Federal District Judge Roszel C. Thomsen in Baltimore.

The judge's problem undoubtedly reflects the dilemma faced by the CIA in 1963 when Heine began touring the United States and Canada showing a movie based on what he says were his experiences as an anti-Soviet guerrilla fighter and began to emerge as an important leader in the Estonian community.

Court Record Noted

The court record indicates the CIA felt it had reason to believe Heine's growth in popularity among Estonians was a threat to "the integrity of the agency's foreign intelligence sources."

It thus presumably had to decide whether to permit him to become a leader in the Estonian community where, if he was indeed a Soviet agent, he could do considerable harm, or to try to find a way to expose him without revealing the CIA's own sources of information.

It was then, according to the CIA's affidavits, that Raus was instructed to make the statements about Heine.

It is logical to assume that the CIA took into account the likelihood that Heine would go to court—although it undoubtedly hoped he would fade into obscurity or slip back through the Iron Curtain, thus, in effect, confirming the charges against him.

It was in this context that one of Raus' two attorneys, E. Barrett Prettyman Jr. (who has declined to say who is paying the rather considerable expenses of fighting Heine's suit), attempted last December to settle the case quietly out of court.

"Money Could Change Hands"

Heine's attorney, Ernest C. Raskauskas, said in a motion filed with the court early this month that Prettyman met with him and his co-counsel, Robert J. Stanford, "to discuss a settlement of this case, in which money would change hands, and in which the defendant would pay off the plaintiff."

"The settlement negotiations broke down," Raskauskas said, "because one of the conditions of the settlement required an outright dismissal

of the suit, and counsel for the plaintiff would neither recommend nor would plaintiff auction his honor."

Alternative Suggested

Raskauskas told a reporter Prettyman proposed that the payment be made in such a way that it would not appear to come from Raus. Raskauskas said he replied that any payment would have to be a "very large sum of money"—enough to enable Heine to carry out his activities in behalf of Estonian liberation.

As an alternative, he said, he suggested that a settlement

could be reached quickly if Prettyman could give him some compelling proof of the charges against Heine with which he could confront his client. It was at that point that the negotiations broke down, before any specific sum has been mentioned.

Shortly after this meeting the first mention of the CIA entered the case in the form of an affidavit signed by Richard Helms, deputy director of the Central Intelligence Agency.

In a court hearing on April

14, Prettyman responded angrily to Raskauskas' charge of an attempted payoff.

"There were repeated discussions, in our office, in their office and over the phone. These discussions were informal, accompanied by the usual joking and joshing, and

to characterize these as an attempt at a payoff is outrageous," he said.

"We could not sanction any settlement that gave the plaintiff any excuse to say he had been exonerated," Prettyman said.

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Wash. Post 23/4/66

CIA Is Accused of Payoff Offer To Clear Agent Sued for Slander

The Central Intelligence Agency allegedly offered to "pay off" a man labeled by one of its agents as a Soviet spy in order to get him to drop his slander suit against the agent.

But, according to court papers filed in Federal court in Baltimore, the man refused to "auction his honor" and "the settlement negotiations broke down because one of the conditions of the settlement required an outright

The court papers related no more details of this strange twist last December in the slander suit brought by Erik Heine of Rexford, Canada, against a fellow emigre from Soviet Estonia, Juri Raus, who is a Bureau of Public Roads engineer in Washington.

Heine, seeking \$110,000 in damages, protests that Raus sought to discredit him in Estonian emigre groups by calling him a Soviet intelligence agent. Without disputing this charge, Raus seeks to have the suit dismissed on the ground that he was acting under CIA orders.

In a startling move made to support motion, CIA Deputy Director Richard Helms in court affidavits confirmed that Raus was a CIA operative. Helms said he was a source of information on Estonia and Estonian emigres and had performed "specific assignments" as well.

Heine's attorneys have challenged Raus's bid for "privilege" (immunity from prosecution) on grounds that the CIA—set up by Congress as a foreign intelligence agency—

intruded into internal security matters.

The CIA had no comment yesterday on the Heine allegation. One official source said, however: "Maybe the CIA got a little out of line. It wouldn't be the first time."

At issue is whether the CIA, in touching emigre affairs, was poaching on the "internal threat" area reserved by law to the FBI or was properly performing its "foreign threat" mission.

Ike to End Vacation

PALM DESERT, Calif., April 22 (UPI)—Former President and Mrs. Eisenhower will end their winter vacation here and return to their Gettysburg (Pa.) farm April 30. The Eisenhowers arrived at this desert resort Jan. 10.

A 4

Friday, April 22, 1966

THE WASHINGTON POST

CIA Moves to Defend Aide Sued for Slander

By Stephen S. Rosenfeld
Washington Post Staff Writer

The next turn in a bizarre slander suit against an Estonian-born highway engineer who doubles as a Central Intelligence Agency operative will be taken Thursday in Baltimore Federal Court.

Chief Judge Roszel C. Thomsen will have before him a motion to dismiss slander charges brought against Juri Raus, who served the CIA in unspecified "specific assignments" among Estonian emigres in the United States and abroad.

Raus was identified as a clandestine U.S. intelligence agent in an unusual—and perhaps unprecedented—affidavit by CIA Deputy Director Rich-

ard M. Helms. It was submitted to defend Raus against a \$110,000 damage claim filed 18 months ago by a second Estonian emigre Erik Heine. Normally the CIA follows a strict policy of not identifying its agents.

Smearing Charged

Heine, 46, a self-described freedom fighter and anti-Communist, charged that three times Raus smeared him by telling Estonian emigre groups Heine was an agent of the Soviet secret police.

Estonia is a Baltic state swallowed by the Soviet Union in 1939, occupied by the Germans in World War II and retaken by the Russians. Informed sources said yesterday

that the CIA has long been interested in emigres by reason of their contacts in their former homelands, and that Soviet intelligence, in turn, has an interest in penetrating and demoralizing emigre ranks.

Raus, a 39-year-old Bureau of Public Roads engineer who lives in Hyattsville at 6508 Osborne rd., has raised a unique defense, according to the lawyers hired for him by CIA — Paul R. Connolly Jr. and E. Barrett Prettyman Jr.

Defense Case Stated

The defense was stated in Helms's affidavit last Dec. 30, which said that when Raus spoke about Heine, he "was in possession of information furnished to him by the CIA and . . . was acting within the scope and course of his employment by the agency on behalf of the United States."

"Under these circumstances," said Raus's lawyers, asking the court to dismiss the suit, "there arises in favor of (Raus) an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery" of damages by Heine.

Their authority is a 1959 Supreme Court decision, *Barr v. Matteo*, decided 5 to 4, shielding "responsible governmental officers" from the harassment of damage suits "brought on account of action taken in the exercise of their official responsibilities." The words are from Associate



ARRESTED—Dade County, Fla., She waves a victory signal to jeering pris the county jail in Miami. A few m canan was booked on charges of p false information about campaign co been suspended from his job.

Justice John M. Harlan's majority opinion.

Heine's lawyers, Ernest C. Raskauskas and Robert J. Stanford, are trying to pierce this immunity barrier by getting the CIA to reveal whether in fact Raus said about Heine what the CIA instructed him to say. This has not yet been established.

In a hearing March 11, Judge Thomsen reared back

at the prospect of Heine being denied justice on the basis of Raus's immunity from prosecution. "You are not going to persuade this Court that there is anybody in this country who does not have some rights," the Judge declared.

He asked that Helms or a representative appear in court to back up the affidavit. The stage is set for this next Thursday.

Help To CIA Stated

Helms, in a second affidavit of April 1, said that "for a number of reasons, including his past history and his position as National Commander of the Legion of Estonian Liberation, Raus has been a source to this agency of foreign intelligence information pertaining *inter alia* among others to Soviet Estonia and to Estonian emigre activities in foreign countries as well as in the United States."

The CIA "employed" Raus "from time to time" on "specific assignments," the second affidavit said, adding that he was "instructed to disseminate (information about Heine) to members of the Legion so as to protect the integrity of the Agency's foreign intelligence sources."

Adding state security to his earlier claim of "privilege," Helms said he had personally determined that further disclosures would injure American security. He said Raus had been ordered, in line with a gag agreement Raus signed in 1963, to make no more disclosures to the court.

Heine's lawyers argue that if Raus and the CIA are going to duck behind "security," then they and not Heine must take the consequences of it.

Raus, a University of Connecticut engineering graduate who also attended Yale's Bureau of Highway Traffic, refused yesterday to discuss his case with a reporter. The CIA refused, too. Heine was not available.

Above the Law

The Central Intelligence Agency is currently engaged in an attempt to deny any means of redress to a man whose character it has ruthlessly assassinated. By an open admission of its deputy director, a CIA operative named Juri Raus was instructed to defame an Estonian, Eerik Heine, active in the Estonian community in the United States by bruiting it about that Mr. Heine was a covert Soviet agent. Mr. Heine sued for slander. Mr. Raus does not deny that he made the offending statements. At the same time he makes no effort to defend them as truthful. He merely submits to the court a CIA assertion that he said what he said on instructions from his superiors, that what he said is therefore privileged and that Mr. Heine's suit ought to be dismissed on these grounds.

The law is probably on the side of the CIA. In 1959, the Supreme Court decided, by five to four, a case, *Barr v. Matteo*, holding that two subordinate officials of the Office of Rent Stabilization had an absolute privilege against a suit for libel based upon a press release they had issued. Chief Justice Warren, in a dissenting opinion, said prophetically and, we think, altogether soundly that the decision would have the "effect of deterring the desirable public discussion of all aspects of our Government and the conduct of its officials. It will sanctify the powerful and silence debate. This is a much more serious danger than the possibility that a Government official might occasionally be called upon to defend his actions and to respond in damages for a malicious defamation."

We make no judgment as to the merits of the controversy between Messrs Raus and Heine. But we think it intolerable that government officials should hold an unlimited license for slander. If, as the CIA asserts, "it would be contrary to the security interests of the United States" to release the information relevant to Mr. Raus's defense, then the CIA ought to indemnify Mr. Heine for the injury done to him. The United States has other interests than security; it has an interest in justice and in the integrity of its courts. We think that a Federal judge ought to have the power to say to the CIA what Judge Albert Reeves said to the FBI when that agency tried to withhold relevant information in the trial of Judith Coplon in 1949: "If it turns out that the Government has come into court exposing itself, then it will have to take the peril. If it embarrasses the Government to disclose relevant material, then the Government ought not to be here."

This case raises some other vital questions. What on earth is the CIA doing trying to manipulate the affairs of the Estonian community in the United States? This kind of interference in the political actions of foreign nationality groups amounts, in our judgment, to a most dangerous sort of subversion, a pollution of one of the main currents of American political life. The CIA ought to be excluded absolutely from involvement in domestic affairs.

O'Neill _____
 Cary _____
 Miller _____
 Appie _____
 File *Heine Raus file*

APR 21 1966

C.I.A. Defends Agent in Court;

Plaintiff Linked to Soviet

By BEN A. FRANKLIN

Special to The New York Times

BALTIMORE, April 20—The Central Intelligence Agency has publicly identified one of its agents in order to defend him in a slander suit.

The agent, Juri Raus, has been sued in the Federal District Court here by a man he accused of being a Soviet agent.

The case is regarded by lawyers on both sides as one that breaks new legal ground. It is an amalgam of international intrigue and the open assertion of the protection provided by the American courts.

The crucial point in the legal strategy of the lawyers retained by the C.I.A. is that Mr. Raus is, or was, a paid undercover operative of the agency and that he committed the slander, if one was committed, on the orders of his superiors as an official act.

By making this assertion, Mr. Raus's lawyers seek to have Chief Judge Roszel C. Thomsen grant them a summary motion dismissing the \$110,000 damage claim brought by Berik Heine, of Toronto, Canada.

Mr. Raus, who is ostensibly a \$10,000-a-year engineer in the Bureau of Public Roads in Washington, has publicly labeled Mr. Heine as agent of the K.G.B., the Soviet secret police.

The lawyers' argument is that Mr. Raus's charge against Mr. Heine was "privileged" because it was made by a "Government official" who merely discharged his assigned duties.

In two closely decided rulings in 1959, the Supreme Court extended to "policymaking" lower officers of the Government the traditional immunity from suit held by Cabinet officers and other top officials. One question in the case here is whether Mr. Raus fits the "policymaking" requirement and is therefore immune from suit.

Insists on Fair Trial

The dispute is further complicated by a maze of other legal and procedural details. All of them seem oddly, often wildly, at variance with the accepted public conception of direct, undeliberated, even brutal action in the underworld of international intelligence.

Judge Thomsen is insisting that Mr. Heine, whether or not he is a Soviet agent, must have as full and fair a trial of his damage claim as the law—and

At a hearing here March 11,

the latest in nearly 18 months of unnoticed and unpublicized public litigation in the case. Judge Thomsen addressed Paul R. Connolly, a top Washington trial lawyer representing Mr. Raus.

"You are not going to persuade this Court that there is anybody in this country who does not have some rights," he declared.

This was only one of Judge Thomsen's tart comments to Mr. Connolly and E. Barrett Prettyman Jr., a former special White House assistant who is co-counsel for the C.I.A. agent. He made the remarks when the two lawyers told him that they could not and would not expand on an affidavit by Richard Helms, deputy director of the intelligence agency.

Absolute Privilege Claimed

The Affidavit said:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Juri Raus, was in possession of information furnished to him by the Central Intelligence Agency, and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the agency on behalf of the United States."

The motion for dismissal filed by Mr. Raus's lawyers says, "Under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff."

Accordingly, the lawyers contend there can be no trial to determine the truth or falsity of the charges and that the suit must be dismissed on a motion.

Security Grounds Cited

In effect, the agency, through Mr. Raus, concedes leveling the charges against Mr. Heine and is saying that it refuses to provide proof of its charges on grounds of "privilege" and national security.

Another point in Mr. Raus's defense strategy is that Mr. Heine's suit, which raises opportunities for discovery of information under the Federal Rules of Civil Procedure, is "contrary to the interests and public policy of the United States."

At one point, Judge Thomsen commented, "If further information were revealed, it might expose the entire U. S. counter-espionage apparatus."

It is uncontested that Mr. Raus charged on three separate public occasions in 1963 and 1964 that Mr. Heine was a

Soviet agent or collaborator and not the heroic Estonian freedom fighter that his deposition on file in the court here asserts he is.

Implies He Sought Data

The court transcript plainly implies the C.I.A. believes that, in joining Estonian emigre groups, Mr. Heine was collecting information on Estonian immigrants in this country, and it simply selected Mr. Raus to "expose" him.

The C.I.A. in Washington said today that it would have no comment on the trial, its security implications or Mr. Helms's affidavit.

At the March 11 hearing, however, Judge Thomsen remained adamant in his dissatisfaction with the Helm affidavit as ground for dismissal. The judge scheduled a further hearing here April 28 to see if Mr. Connolly and Mr. Prettyman could produce further information from Mr. Helm in court.

"This is a kind of backhanded statement that he [Raus] was employed by the agency," Judge Thomsen declared.

At another point, he said, "I am not going to accept some flat letter from the head of an agency that 'we are not going to say any more.' Somebody is going to say that on the witness stand here."

Objects to Any Subpoena

Mr. Connolly, however, told the court that any attempt to subpoena Mr. Helm as a witness would be met with an immediate motion to quash the subpoena under the doctrine of executive privilege. That doctrine immunizes top Government officials from appearances in court.

In a slightly amended affidavit on April 4, Mr. Helm said, "For a number of reasons, including his past history and his position as national commander of the Legion of Estonian Liberation, the defendant [Mr. Haus] has been a source to this agency of Foreign intelligence information pertaining inter alia to Soviet Estonia and to Estonian emigre activities in foreign countries as well as the United States."

The amended affidavit went on, "The Central Intelligence Agency has employed the defendant from time to time—concurrently with his duties on behalf of the Bureau of Public Roads—to carry out specific assignments on behalf of the agency."

Escaped to Canada

A 924-page deposition is on file here from Mr. Heine, a 46-year-old Estonian now living in Rexdale, Ont., a Toronto suburb.

He maintains that, from 1940, when the Russians seized Estonia, until 1950, when he was sentenced to death by a Soviet court, he lived under almost continuous Soviet persecution.

The deposition says that Mr. Heine fled a Soviet prison and escaped to Canada. Among Estonian groups in the United States, his deposition says, he was regarded as an unquestioned Estonian patriot.

Mr. Raus, 36 years old, at first defended his accusations against Mr. Heine as privileged on the basis of Mr. Heine's official role as national commander of the Legion of Estonian Liberation, a voluntary emigre group in this country with no official status.

The C.I.A. was not mentioned in the court papers here until nearly 13 months of litigation had passed.

Explaining this delay, Mr. Connolly and Mr. Prettyman said that the agency had forbidden them to employ their present defense line until it became apparent that the initial defense would not stand up in court.

The suit, originally filed in November, 1964, was regarded for months as merely a routine dispute between two competing leaders of Estonian emigre groups.

NYT
21 Apr 66

F.B.I. Aide Sues Hoover

Accused of Being a Soviet

By BENJAMIN SVETKEY
Special to The New York Times

BALTIMORE, April 20—The Central Intelligence Agency has publicly identified one of its agents in order to defend him in a slander suit.

The agent, Juri Raus, has been sued in the Federal District Court here by a man he accused of being a Soviet agent.

The case is regarded by lawyers on both sides as one that breaks new legal ground. It is an amalgam of international intrigue and the open assertion of the protection provided by the American courts.

The crucial point in the legal strategy of the lawyers retained by the C.I.A. is that Mr. Raus is, or was, a paid undercover operative of the agency and that he committed the slan-

Continued on Page 27, Column 3

Ex-Clerk Fights Discharge

By FRANK P. GRANTANI
Special to The New York Times

WASHINGTON, April 20 — A 25-year-old bachelor, dismissed by the Federal Bureau of Investigation for an indiscretion with a woman friend, sued the bureau's director, J. Edgar Hoover, today for violation of his right of privacy.

Thomas H. Carter, a former clerk in the bureau's fingerprinting division, said that Mr. Hoover had dismissed him for "conduct unbecoming an employee of this bureau" after F.B.I. agents pried into the intimate details of his relationship with the woman.

Mr. Carter contended in the suit that Mr. Hoover had violated his constitutional right of privacy by dismissing him after "it was reported that he had

Continued on Page 27, Column 1

BEST COPY

Available

...the latest in nearly 10 months of unnoted and unpublished public litigation. He was judge Thomson addressed Paul E. Connolly, a top Washington lawyer representing Mr. Raus.

"You are not going to the Supreme Court that way. If anybody in this country who does not have some rights," he declared.

This was only one of several Thompkins's law comments to Connolly and R. Burns, a former special White House assistant who is co-counsel for the CIA. agent he made the remarks when the two lawyers told him that they could not say would not appear on an affidavit by Richard Helms, deputy director of the intelligence agency.

Absolute Privilege Claimed
The affidavit said:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Judge Thomson, was in possession of information furnished to him by the Central Intelligence Agency, and when he spoke concerning this material on such occasions he was acting within the accepted course of his employment by the agency on behalf of the United States."

The motion for summary judgment by Mr. Raus's lawyers says: "Under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, or precludes a showing of actual malice, any possibility of recovery by the plaintiff."

Accordingly, the lawyers contend there can be no trial to determine the truth or falsity of the charges and that the suit must be dismissed on a motion.

Security Credits Offer
In effect, the agency, through Mr. Raus, conceding leveling the charges against Mr. Helms and is saying that it wishes to provide proof of its charges on

grounds of "privilege" and national security.

Another point in Mr. Raus's defense strategy is that Mr. Helms's affidavit, which states on oath that he is a CIA agent, is a lie.

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WASH. POST, 21 Apr 66

CIA Records Sought in Slander Suit

BALTIMORE, April 20 (AP) — Chief Judge Ronald C. Thomason of U.S. District Court said today that lawyers are attempting to persuade the Central Intelligence Agency to provide information so a slander suit may be tried.

Pretrial hearings have been going on for two years in the suit filed in 1964 by Eerik Heine, 43, of Rexdale, Ontario, against Juri Raus, 39, of 6508 Osborne rd., Hyattsville.

Heine, seeking \$10,000 in compensatory damages and \$100,000 in punitive damages, contends that Raus slandered him by calling him an agent of the KGB, the Soviet Secret Police.

Heine is a candidate for election in the Estonian Cultural Council, the central agency for Estonian nationals in Canada.

He said he was highly respected by the Legion of Estonian Liberation Inc., an Estonian veterans organization, and Raus's allegation damaged this respect. Raus is an official of the veterans group.

In the pretrial hearings since the suit was filed, Raus has contended he gave information about Heine in his (Raus') capacity as an agent of the CIA.

One paper filed in the complex case states that the CIA hired Raus to carry out specific assignments, but there was no elaboration on locale or details of those assignments.

Raus had said he promised he never would divulge information obtained through his association with the CIA without written permission from the CIA. The CIA has said the information is privileged and it will not divulge any details relating to Heine.

The CIA refusal has thwarted the solution of the case but Judge Thomason has refused to grant motions for its dismissal in the hope the CIA might later modify its position.

Savagone

Week End 21/14/66
Luchwald

Hand to Thee, Dear CIA

By Art Buchwald

IT WAS revealed last week that a study project on Vietnam at Michigan State University was really a cover for a CIA-financed operation. It was charged that the project, which lasted from 1955 to 1960, was used to set up the Diem government in Vietnam and keep it in power.



The university has admitted that it did go along with the CIA and knew the agents were on campus. But it denied an article in Ramparts magazine that it did anything wrong.

The revelation has caused a certain amount of apprehension in the academic world and nobody can be sure anymore who is a legitimate student and who is a member of the CIA.

Just the other day at Rambling Tech University a professor of government called in one of his students and said, "Mr. Green, I don't understand this essay. You handed in nothing but a blank sheet of paper."

"What's the matter, professor, haven't you heard of invisible ink?"

"Invisible ink?"
"I ran out of ink, so I had to write with my other pen. Put it in a pan of water. The essay's all there."

THE PROFESSOR took the essay over to his sink and poured water on it. "This is very strange. Oh, yes, now I see it. The title of the essay is 'Zink the Zonk Government Zeek and Zak Higher Zip Education.'"

"That's right," Green said, "you have to read every second word."

"I don't understand."
"I can't help it. That's the way they taught me to write in high school."

"Green, I notice you never take any notes in my class. Can you explain this to me?"

"It's because of my tie clasp. You see, my tie clasp is really a radio transmitter. I have a tape machine back in my room and all I do is

"A training exercise?"
"Yeah, I was thinking of working for Xerox when I finished school."

"Green, I don't want to seem unreasonable, but the last book report you handed in was on intercoms."

"What's wrong with that?"
"Nothing except you hid it in a pumpkin behind your fraternity house. I don't have time to look for hidden book reports."

"I GUESS it's force of habit. Look, I've got a meeting this afternoon with a courier, I mean a fraternity brother. Is there anything else?"

"Yes, there is, Green. I'm going to flunk you."
"Flunk me in government?"

"Flunk you in the CIA." The professor whipped out a CIA card. "I'm your superior, Green, in charge of the operation at this school and you've made a hash of things."

"But how?"
"It turns out the sorority girl you're dating works for the Students Against American Intervention in Vietnam. She's had you bugged from the beginning."

"But how?"
"Take a close look at her sorority pin which you're wearing."

"My, gosh, you can't trust anybody anymore."

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... papers with a Minox camera."
"Yeah, well, it was just a training exercise."

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SACRAMENTO, CALIF.
BEE

E. 166,681
S. 185,185

APR 21 1966

CIA Unveils Agent To Back Him In Suit

New York Times news service

BALTIMORE, Md. — For the first time in its history, the Central Intelligence Agency has been forced to identify publicly one of its agents to defend him from a slander suit brought by an alleged agent of the Soviet Union.

The case, in Baltimore Federal Court, is regarded by lawyers on both sides as one that breaks entirely new legal ground.

It is a strange mixture of international intrigue and the open assertion of the constitutional protection provided by the American courts, even to alleged secret agents of a foreign power.

On Order Of Bosses

The crucial point in the legal strategy of lawyers retained by the CIA to defend Juri Raus—ostensibly a \$10,600-a-year engineer in the bureau of public roads in Washington—is that

Raus is, or was, a paid undercover operative of the CIA and that he committed the slander, if any was committed, on the orders of his CIA superiors as an official act.

By making this unusual assertion, Raus' lawyers are seeking to have Chief Judge Roszel C. Thomsen of the United States District Court grant a summary motion dismissing the \$110,000 damage claim of Berik Heine of Toronto, Canada, whom Raus has labeled an agent of the KGB, the Soviet secret police.

The lawyers' argument is that Raus' charge against Heine is "privileged" because it was made by a government official who merely discharged his assigned duties.

Other Rulings Cited

Under two closely-decided supreme court rulings in 1959, the traditional immunity from suit of cabinet officers and other government departments who are "policymakers."

One question here is whether Raus fits the "policymaking" requirement, and is therefore immune from the suit.

Judge Thomsen is insisting that Heine, whether or not he is a Soviet agent, must have as full and fair a trial of his damage claim as the law — and the CIA — will allow.

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BUFFALO, N.Y.
NEWS

E. 283,236

APR 21 1966

Head of Estonian Emigre Unit Identified as CIA Agent

Court Hearing Slander Suit Told of U. S. Role
In Rumors Canada Resident Worked for Reds

By TOM LAMBERT.

Special to Buffalo Evening News
and New York Herald Tribune

WASHINGTON, April 21 —

The Central Intelligence Agency has been deeply involved in the affairs of Estonian emigres in this country and Canada, a Baltimore Federal Court case has revealed.

The court action also has disclosed that the leader of an Estonian emigre group in this country—who was concurrently a CIA agent and a Federal Bureau of Public Roads engineer—was acting for the CIA when he spread rumors that an Estonian emigre in Canada was a Soviet secret police (KGB) operative.

In an affidavit filed with the court, CIA Deputy Director Richard Helms said his agency supplied the rumor material and ordered it spread about "so as to protect the integrity of the agency's foreign intelligence sources."

\$110,000 Suit Filed

The case began Nov. 6, 1964, when Eerik Heine filed a \$110,000 slander suit against Juri Raus. Mr. Heine, a 48-year-old Estonian emigre, lives in Rexdale, near Toronto.

Mr. Raus, 39, is a \$10,605-a-year engineer with the United States Bureau of Public Roads. This bureau has installations adjoining the CIA in Langley, Va. Mr. Raus lives in Hyattsville, Md., a Washington suburb. He is the national commander of the Legion of Estonian Liberation Inc., an Estonian veterans organization in this country.

It is believed that Mr. Heine went to Canada in 1957, after having been released from a Soviet prison the previous year, and began devoting himself to liberating Estonia from the Soviet Union.

Displayed Film in U. S.

In 1963, he came to the U. S. to display a film about Estonian guerrillas and urge the liberation of his country. It was at

that time that he presumably heard rumors that he was an agent of the Soviet secret police.

Those rumors apparently prompted Mr. Heine to file his Baltimore court suit, in which he alleged that Mr. Raus accused him of being a Communist and Soviet secret agent on three different occasions in 1963 and 1964.

Claims Privilege

In a reply filed Jan. 3, 1965, Mr. Raus acknowledged he had said on one of those occasions "that he was in possession of responsible information received by him from an official agency of the U. S. government that the plaintiff (Mr. Heine) was a Soviet agent or collaborator."

As yet, there had been no mention of the CIA in the case. That came last Jan. 11, when Mr. Raus' attorneys filed a motion for summary judgment in the case, claiming their client had absolute privilege because he was acting as a U. S. government official.

Mr. Heine's attorneys, and Chief U. S. District Court Judge Roszel C. Thomsen as well, were reported to have been disturbed by this development and to have voiced their perturbation.

Await Word From CIA

In response, Mr. Raus' attorneys filed with the court on April 4 an affidavit signed by Mr. Helms elaborating somewhat on Mr. Raus' affiliation with the CIA, as follows:

"For a number of reasons . . . the defendant has been a source to this agency of foreign intelligence information pertaining to Soviet Estonia and to Estonian emigre activities in foreign countries as well as in the U. S."

Judge Thomsen has denied several dismissal motions in the past two years in hopes that the CIA will make available information on Mr. Heine.

No trial date has been set, pending official and final word from the CIA on whether it will provide the information.

4/10/66

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ATLANTA, GA.
CONSTITUTION

N. 200,642

APR 21 1966

CIA Defends Agent In Suit for Slander

By BEN A. FRANKLIN

(Copyright 1966 by the New York Times Co.)

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The case, in Baltimore federal court, is regarded by lawyers on both sides as one that breaks entirely new legal ground. It is a strange amalgam of covert international intrigue and the open assertion of the constitutional protection provided by the American courts, even to alleged secret agents of a foreign power.

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Judge Thomsen is insisting that Heine, whether or not he is a Soviet agent, must have as full and fair a trial of his damage claim as the law — and the CIA — will allow.

At a hearing here on March 11, Judge Thomsen told Paul R. Connolly, a Washington trial lawyer representing Raus, that "You are not going to persuade this court that there is anybody in this country who does not have some rights."

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Front Page	Edit Page	Other Page
SAN FRANCISCO, CAL. CHRONICLE		
- 351,489		
APR 21 1966		
<h1>Strange CIA Court Case -- 'Spy' Sues</h1>		

New York Times

Baltimore, Md.

For the first time in its history, the United States Central Intelligence Agency has been forced to publicly identify one of its agents in order to defend him from a slander suit brought by an alleged agent of the Soviet Union.

The case, in Baltimore Federal Court, is regarded by lawyers on both sides as one that breaks entirely new legal ground.

It is a strange amalgam of covert international intrigue and the open assertion of the constitutional protection provided by the American courts, even to alleged secret agents of a foreign power.

The crucial point in the legal strategy of lawyers re-

tained by the CIA to defend Juri Raus—ostensibly a \$10,600-a-year engineer in the Bureau of Public Roads in Washington—is that Raus is, or was, a paid undercover operative of the CIA and that he committed the slander, if one was committed, on the orders of his CIA superiors as an official act.

By making this unusual assertion, Raus' lawyers are seeking to have Chief Judge Roszel C. Thomsen of the United States District Court grant a summary motion dismissing the \$110,000 damage claim of Berik Heine of Toronto, Canada, whom Raus has publicly ABELED AN AGENT OF THE KGB, the Soviet secret police.

'PRIVILEGED'

The lawyers' argument is that Raus' charge against Heine is "privileged" because it was made by a "government official" who merely discharged his assigned duties.

Under two closely decided Supreme Court rulings in 1959, the traditional immunity from suit of Cabinet officers and other government officials was extended to lower officers of government departments who are "policymakers." One question here is whether Raus fits the "policymaking" requirement, and is therefore immune from the suit.

JUDGE

Judge Thomsen is insisting that Heine, whether or not he is a Soviet agent, must have

as full and fair a trial of his damage claim as the law—and the CIA—will allow.

At a hearing here on March 11, the latest in nearly 18 months of unpublicized public litigation in the case, Judge Thomsen told Paul R. Connolly, a Washington trial lawyer representing Raus, that "You are not going to persuade this court that there is anybody in this country who does not have some rights."

AFFIDAVIT

This was only one of Judge Thomsen's tart comments to Connolly and E. Barrett Prettyman Jr., a former special White House assistant who is co-counsel for the CIA agent, when the two lawyers explained that they could not and would not expand an affidavit by Richard Helms, deputy director of the CIA, which declared:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Juri Raus, was in possession of information furnished to him by the Central Intelligence Agency and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the Agency on behalf of the United States."

The motion for dismissal filed by Raus's lawyers adds that "under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff."

NORTIERN

APR 21 1966

CIA Man's Immunities Are Studied

BALTIMORE (UPI) —A federal court judge here is faced with a legal dilemma unique in the annals of American jurisprudence: Is a U.S. secret agent immune from the ordinary laws of the nation?

The question stems from a civil slander suit brought by Erik Heine, 46, of Rexdale, Ont., a suburb of Toronto, against Juri Raus, 39, of Hyattsville, Md., an engineer for the U.S. Bureau of Public Roads.

Raus is national commander of an Estonian emigre organization dedicated to freeing the little Baltic nation from Russian rule; Heine is also prominent in the same cause.

Heine alleges that Raus slandered him by telling other Estonian emigre leaders he (Heine) was in reality a double agent, serving the Russians.

Heine told a dramatic story of capture and escape, of daring guerrilla raids against the Russians in Estonia in his capacity as one of the nation's leaders in the fight for freedom, according to a copyrighted dispatch in the Washington Evening Star.

But the case took an even more dramatic turn when Raus claimed immunity from the slander suit, citing absolute privilege as an official of the U.S. government—not as an engineer for the Bureau of Public Roads but as an agent for the Central Intelligence Agency (CIA).

And, what's more, the CIA, in an unheard of move, identified Raus as an agent. It said that he was acting in an official capacity when he allegedly spoke against Heine, that it had directed him to do so.

Heine Raus

SPECIAL REPORT

The Strange Case of Eerik Heine and the CIA

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By ORR KELLY
Star Staff Writer

In the high-ceilinged main courtroom of the Federal building in Baltimore, Chief Federal Judge Roszel C. Thomsen listened intently as the lawyers before him argued their case.

On the surface it was a routine case: Civil Action No. 15952, a complaint in damages for slander, Eerik Heine, plaintiff, v. Juri Raus, defendant. It seemed to be a petty dispute between two members of the Estonian community.

But at one point, Judge Thomsen leaned forward and said:

"If further information were revealed, it might expose the entire U.S. counter-espionage apparatus."

Clearly Heine v. Raus was something special.

Over the last 17½ months, the file on Civil Action No. 15952 has grown into a documented tale of intrigue as gripping and as puzzling as any spy story.

The plaintiff, Eerik Heine, is a 46-year-old Estonian. He now lives in Rexdale, Ont., a suburb of Toronto, and by his own story of his life is one of the great freedom fighters of all time. On three separate occasions, he said in his suit, Raus accused him of being a Communist and an agent of the K.G.B., the dread Soviet secret police.

Raus, the man accused of slandering Heine, is an admitted agent of the Central Intelligence Agency and, in CIA's own words, "was instructed to disseminate such information . . . so as to protect the integrity of the Agency's foreign intelligence sources."

Raus is 39, lives at 6508 Osborne Rd., Hyattsville, Md., and is an engineer for the Bureau of Public Roads and national commander of an Estonian veterans' organization, *Eesti Vabadussõjalaste Liit* (the Legion of Estonian Liberation, Inc.).

Heine is asking \$10,000 in compensatory damages and \$100,000 in punitive damages in the suit, filed in the U.S. District Court in Baltimore on Nov. 6, 1964. He is represented by two Washington attorneys, Ernest C. Raskauskas and Robert J. Stanford.

The importance of the case began to emerge when, early in January, 1965, Raus' answer was filed through Hogan & Hartson, one of Washington's major



EERIK HEINE

law firms. His attorneys were Paul R. Connolly, a top trial lawyer, and E. Barrett Prettyman, Jr., former assistant U.S. Attorney General, former White House special assistant and a major figure in negotiations for the release of the Bay of Pigs prisoners.

The statements he had made about Heine, Raus said in his answer, were made in his official capacity as commander of the Estonian Legion and, he added, he "was in possession of responsible information received by him from an official agency of the United States government."

The CIA was not mentioned, however, until a year later.

Raus' charges created a bitter split in the Estonian community in North America, which numbers some 20,000 to 30,000 persons. August Kuklane of 4714 St. Thomas Ave., Baltimore, a contractor and Maryland commander of the Estonian Legion, recalled in a recent interview his reaction when he first heard the charges.

"I have such a feeling as someone hit me on head," he declared.

Kuklane said he put the issue very forcefully to both men. "I pointed my finger at Heine and I told him, 'You know what that means. If you are guilty, it means the rope.' And I told Yuri Raus, 'If this man is innocent, you have done a deadly sin.'"

Legal Dilemma

Members of the Estonian community urged Heine to file suit so that the truth or falsity of the accusations could be learned.

For Judge Thomsen the case has posed a legal problem unlike any a

U.S. judge has ever faced. Raus has claimed absolute privilege because, he says, he was acting as an official of the U.S. Government. Further he is bound by a secrecy agreement with the CIA which apparently prevents the court or Heine's lawyers from inquiring into the nature of his duties as a CIA agent.

In a hearing on March 11, Connolly summed up the dilemma faced by Judge Thomsen:

"If indeed the plaintiff is an innocent law-abiding citizen, a dedicated fighter for his homeland, if he is a person who has all his life opposed the Soviet Communist conquest of his homeland and has fought Soviet principles and something has been said of him to damage his reputation, it is indeed a monstrous thing that has happened to him.

"On the other hand, if this man posing as a freedom fighter, posing as an Estonian partisan against Soviet rule in his homeland, if he has in fact been a Soviet agent, then what has happened to him is no more than any American I think would believe was his just desserts.

"The difficulty in approaching such a case is that at the outset we do not know which is true, and if we could try the issue of whether it is true or not, perhaps that particular issue would be satisfied; but the law and the Supreme Court itself has established a clear-cut principle that prevents inquiry . . ."

One-Sided Story

Under strict instructions from the CIA, Raus is prevented from telling his side of the story. In a court hearing last week, his attorney, Prettyman, said Raus might be even more eager

than Heine to have the approved face public. But at this time only Heine's story is available.

Long before the CIA involvement in the case was made public, Connolly and Prettyman began the preparation of their defense by taking a deposition from Heine. They questioned him on Feb. 27 and March 1, 2, and 3, 1965. The 924-page transcript of the deposition, now on file in the court, gives Erik Heine's detailed story of his life.

According to Heine's story he was captured by the Russians three times, escaped twice, spent some seven years in Russian prisons and once made a daring 5,000 mile trip across the north of Russia while there was a price on his head as a guerrilla fighter.

The line of questioning during the taking of the deposition indicates the attorneys might have a question as to whether the man who calls himself Erik Heine is, in fact, really Erik Heine. One version of the stories circulating about him, he himself said, is that the real Erik Heine died in the forests of Estonia as a freedom fighter and that he has been replaced by a superbly clever Soviet agent.

"They say I am not I," he commented.

Heine's Story

The following account of the life of Erik Heine, then, is based on the deposition and on a lengthy interview with the plaintiff in Rexdale, where he lives in a four-bedroom, \$18,000 bungalow with his wife, who is a registered nurse, and a 70-year-old woman he identifies as his mother:

Erik Heine was born Sept. 15, 1919 in Tartu, Estonia to the wife of the owner of northern Europe's largest piano manufacturing plant.

He first came to public attention in August of 1940 when the Communists, in the process of taking over the country, hung the Red flag from the Tartu city hall.

"When they raised the Red flag on the city hall, I went with a couple of my young friends to try to pull that down, the Red flag and put up our Estonian tri-color," he says in the deposition.

"We struggled there in these corridors and in the tower there. We were pulled down by these Communists and on that day when we struggled there, the three, four youths that we were, thousands of people gathered around when news got out that we were there, thousands of people gathered around that city hall, and they began to sing our national anthem and these Communists were struck with terror and we used that moment to slip out of there, the crypt, and we were free, but not for long."

The NKVD put Heine's parents under house arrest and spread the word that they would be killed if he did not surrender. He gave himself up.

Tale of Torture

When asked about his experiences at the hands of an NKVD major named Marrazian, he replied:

Release 2006/04/19 : CIA-RDP75-00770R000100180004-1
"The methods of torture, the beatings, that was the simplest and easiest, but the worst agony was that they used electricity, especially on the sexual organs.

"And two times I was taken out from my prison and led to a nearby forest where they had a secret execution place, and two times they, you know, made a mock killing or mock shooting. They put me on the edge of that grave, and then, you know, first time only they had rifles on their shoulder, and I waited for when it comes, and nothing comes; the second time they even fire, but not at me, but to subdue me so that I tell about these activities they suspected I was a part of."

While Heine was in the Soviet prison in Tartu, his parents emigrated to Germany — this was during the period of peace between the USSR and Germany established by the Molotov-Ribbentrop Pact — and he and several other prisoners were exchanged for German Communists in April 1941.

When war broke out between Germany and the USSR, Heine was trained as an officer by the Germans, had his blood type tattooed inside his left arm and was assigned to an Estonian unit of the Waffen SS — the crack frontline troops of the German army. After service in the Ukraine, he was sent back to Estonia and became a member of the political police — which, he insists, was sharply distinct from the Gestapo.

In 1944, he returned to the army and fought in the front lines.

Capture and Escape

He was asked during the taking of the deposition how many Russians he had killed.

"You know, sir," he replied, "we were not that kind of people that kept records like the Russians about their killings. I may say, maybe a hundred, maybe 200, who knows."

But the overwhelming firepower of the Soviets proved too much and the front in the southern part of Estonia — near his home town of Tartu — collapsed.

Heine was captured and spent the winter of 1944-45 in a Russian slave labor camp where, he said, the prisoners lived in subhuman conditions and where death from beatings, starvation and murder by criminal prisoners was an everyday occurrence.

At the height of a snowstorm in March of 1945, he said, he crawled through the four barbed wire fences surrounding the prison — across what the prisoners called the "death zone" — and escaped. From there, he walked and rode trains across northern Russia, heading always toward the west, toward Estonia.

To keep from starvation, he said, he stole food — and it was the theft of a loaf of bread that led to his capture outside of Leningrad.

He was transferred with a group of Estonian prisoners to a camp in Estonia, from which he escaped into the forests, where he became a member of a small guerrilla band, he said.

Describes Killing

Under questioning by Raus' attorneys, he told how he became a trusted member of the guerrilla band:

"You have to know that to get full member of a guerrilla force you have to kill with your own hands a government officer or soldier and that I did that same year. I killed a district of Viljandi officer. . . .

Q. When did you have this killing when you had to do it with your bare hands?

A. He was still alive, wounded severely, and I shot him myself.

Q. You then went up to the car and shot him?

A. Yes.

Q. Where?

A. In the face.

Sentenced to Death

In August of 1947, Heine said in the deposition, he went alone 2,500 miles across Russia in an attempt to rescue an Estonian woman from a Siberian deportation camp. But, he said, she was afraid to accompany him so, instead, he brought four adults and two children safely back to Estonia.

In 1950, he said, while he was attending a music festival, agents of the Soviet secret police pounced on him.

He was sentenced to death, he said, but the sentence was commuted to 25 years in prison and he spent the next six years in a variety of Russian prisons. What is publicly known about what happened to Heine during those years comes almost entirely from his own story as told in the deposition. He was released as a prisoner of war in November, 1956, learned that his mother was then living in Canada and joined her there in 1957.

He was also reunited there, he said, with Elsa Varres, a tall, handsome woman with dark blonde hair and flashing blue eyes, whom he had not seen since they were in a camp in Germany, and they were married in Toronto on Dec. 28, 1957.

Heine's life during the next seven years was almost totally devoted to the cause of Estonian liberation.

"I had a feeling God Almighty had something for me," he said in an interview, "—some kind of mission—some kind of work put upon me. Otherwise why save me through all those horrible things—all hunger, pain and torture?"

Subject of Book

In a long series of interviews, he told his life story to Arved Viiraid, an author and the husband of his wife's sister. A fictionalized account of his life, which Heine refers to as "my autobiography," has been published in both Estonian and English under the title, "Rain For the River," and it has helped to make Heine well known among Estonians.

He has also worked, without significant success, to get support for a plan to send propaganda materials into Estonia by way of balloons. He hopes to continue with this project when his lawsuit against Raus has come to an end.

Some members of the Estonian community have found this activity disturbing because another man several years ago represented himself as a staunch anti-Communist, sought



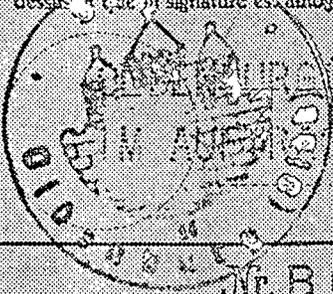
Erich Heine

Unterschrift des Passinhabers
Signature of bearer
Signature du titulaire

Es wird hiermit bescheinigt, daß der Passinhaber die im Lichtbild dargestellte Person ist und die Unterschrift darunter eigenhändig vollzogen hat.

It is hereby certified that the bearer is identical with the person on the photograph and that the signature has been given in his own hand.

Il est certifié que le titulaire est la personne représentée par la photographie ci-dessus et que sa signature est autographe.



den 3. März 1963
the / le

W. W. W.

Unterschrift / Signature / Signature

Nr. B 0986055

Eerik Heine says this German passport was issued to him shortly after his release from a Soviet prison.

support for a similar balloon project and was then exposed as a Soviet agent.

The only reference to that incident in the court papers now on file, however, was when Heine was asked, during the taking of the deposition, if he had heard of the man, identified as Arthur Hamann. He said he had read about him in the Estonian newspapers, but had never seen or corresponded with him.

Heine's activities as an advocate of Estonian liberation came to a climax of sorts in the spring of 1963.

In March of that year, he completed a 2½-hour, 16-mm. film about the Estonian guerrillas, called "Legendi Loojad" or, in English, "Creators of Legend."

Toured Country

He then toured the United States,

showing the movie and lecturing, primarily to Estonian audiences, on his experiences as a guerrilla. It was shown in Baltimore May 18 and in Washington May 19, 1963.

The only hope for Estonia, he told his audiences, is the complete overthrow of the Communist world. "I am," he said during a recent interview in the book-lined living room of his home in Toronto, "a Goldwater man."

It was during his tour of the United States, he said, that he first began to hear the rumors that he was a K.G.B. agent although the first of the three specific instances of alleged slander cited in his complaint occurred in New York on Nov. 9, 1963.

The beginning of Heine's lecture tour coincided with another incident that brought him into prominence in the Estonian community. Although he describes himself as "a fighting man,

Heine received 400 or 500 votes more than his closest competitor—he terms it a "landslide"—and could then expect to be named the president of the council. But, because of the rumors about him, he said, he declined that post. He is, however, one of some 60 candidates in another election to be held next month.

With financial help from Estonian acquaintances who were eager to learn the truth or falsity of the charges against him, Heine filed suit in November of 1964.

Accuses Raus

He asserts that Juri Raus accused him of being a Communist and a K.G.B. agent on Nov. 9, 1963 at a meeting of the board of the Legion of Estonian Liberation in New York; on July 4, 1964, at an Estonian gathering at Laurel Acres, Pasadena, Md., and on or about Sept. 4, 1964, at a gathering at Estonian House in Baltimore.

In his answer, filed on Jan. 3, 1965, Raus admitted that he had said, at the New York meeting, "that he was in possession of responsible information received by him from an official agency of the United States government to the effect that the plaintiff was a Soviet agent or collaborator. . . ."

He also admitted speaking to Kukulane, the Baltimore Estonian, on an earlier occasion than the dates mentioned in the suit "in substantially the same terms," but he denied making the statements at the times mentioned in the suit.

In an affidavit filed a few days later, Raus said that he was born and reared in Estonia, that he was 38 years old, that he came to the United States as an emigre in 1949 and that he is now a naturalized citizen.

At that time, he said, he was a GS-12 in the Bureau of Public Roads at a salary of \$10,605 a year and that he was married and had two children, aged five and two. His only other income, he said, was \$1,000 a year received as a captain in the Army in the court record until January of 1966.

Privilege Claimed

The CIA was not mentioned until long after the taking of the Heine deposition in February and March of last year. That was on Jan. 11 of this year, when Raus' attorneys filed a motion for summary judgment. They claimed he had absolute privilege because he was acting as an official of the United States government.

Attached to the motion was a one-page affidavit signed by Richard Helms, deputy director of Central Intelligence, in which he said:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Juri Raus, was in possession of information furnished to him by the Central Intelligence Agency, and when he spoke concerning the plaintiff

Continued

on such occasions he was acting within the scope and course of his employment by the Agency on behalf of the United States."

The motion filed by Prettyman and Connolly said:

"Under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff. As a matter of law, the defendant is entitled to judgment."

They were on good legal grounds. In a number of cases, the Federal courts have held that it is in the country's interest to protect government officials from libel or slander suits for things they say in the course of their official duties — even if they speak falsely and with malice.

But in this case — the first the opposing attorneys know of involving the CIA — there was the added element of secrecy, imposed by law on the CIA.

Judge Disturbed

In their reply, Heine's attorneys, Raskauskas and Stanford, argued that it was unfair to permit the defendant to add a totally new element to his defense more than a year after the suit had been filed.

"He leads this Court to believe that he has extremely limited resources from which to conduct this litigation, and nowhere does he suggest, that in the event that his then subsisting defenses proved to be fictions, he has the majesty of the United States, the money of the CIA, and the mockery of absolute privilege hovering on a standby basis, to be thrust upon this Court and the plaintiff in the case of need," they said.

Judge Thomsen seemed deeply disturbed by the dilemma he faced. At one point, he said:

"... I think that the plaintiff is entitled, assume the plaintiff is a Communist, assume he is everything you say, every body has some rights in this country. ..."

And later he added:

"All people in the United States, just as Mr. Justice Frankfurter said, 'There are some things you cannot do to a dog,' ... and I think it applies in this case. ... You are not going to persuade this court that there is anybody in this country who does not have some rights."

CIA Affidavit

On April 4, responding to the concern expressed by the judge, Raus' attorneys filed a new affidavit signed by Helm in which he gave more details of Raus' employment by the CIA. He said:

"For a number of reasons, including his past history and his position as National Commander of the Legion of Estonian Liberation, the defendant has been a source to this Agency of foreign

intelligence information pertaining inter alia to Soviet Estonia and to Estonian emigre activities in foreign countries as well as in the United States.

"The Central Intelligence Agency has employed the defendant from time to time — concurrently with his duties on behalf of the Bureau of Public Roads — to carry out specific assignments on behalf of the Agency. ...

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant was furnished information concerning the plaintiff by the Central Intelligence Agency and was instructed to disseminate such information to members of the Legion so as to protect the integrity of the Agency's foreign intelligence sources. Accordingly, when Juri Raus spoke concerning the plaintiff on the occasions about which complaint is made, he was acting within the scope and course of his employment by the Agency on behalf of the United States. ...

"After a personal review of the Agency's activities pertaining to Eerik Heine, I have reached the judgment on behalf of the Agency that it would be contrary to the security interests of the United States for any further information pertaining to the use and employment of Juri Raus by the Agency in connection with Eerik Heine to be disclosed. ...

"I am herewith directing Juri Raus to make no further disclosures concerning his employment by the Agency or relating to this matter without specific authorization by proper officials of the Central Intelligence Agency."

Attached to the affidavit was a secrecy agreement signed by Juri Raus on May 29, 1963 in which he promised never to divulge information obtained because of his association with the CIA without written permission.

Where's the Answer?

During the hearing last Thursday, Judge Thomsen seemed several times to be on the verge of granting Raus' motion for summary judgment based on his claim of absolute privilege. But he ended the hearing with a request for one more attempt to see if the CIA is able to provide any further information.

It was then that he expressed his concern that the revelation of any more about the case "might expose the entire U.S. counter-espionage apparatus."

What is the whole truth about Eerik Heine?

In the more than a thousand pages already in the court record, there is no satisfactory answer. At this stage of the case, in fact, Raus relying on the defense of privilege, has not even asserted that the things he said about Heine are true.

Because of the secrecy surrounding the case, the full story of Eerik Heine, Juri Raus and the CIA may never be told.

Front Page	Edit/ Page	Other Page

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APR 10 1966

Spies Who Came To Court

Final argument in a slander case involving Eerik Heine, an accused Soviet spy, and Juri Raus, an admitted operative of the Central Intelligence Agency, will be heard in Baltimore Friday.

Aside from the melodramatic and romantic aspects of the confrontation, deep questions about rights and privilege are being raised.

Eerik Heine, an Estonian emigre who has established a reputation as a freedom fighter, is suing Juri Raus, also Estonian, for slander. Heine alleges that Raus on three occasions accused him of being a Communist and a Soviet agent. Raus denies making the statements at the times mentioned in the suit, but admits that he called the plaintiff a Soviet agent or collaborator. Involved are Heine's claims for \$10,000 in compensatory damages and \$100,000 in punitive damages.

Raus is an admitted operative of the Central Intelligence Agency. On at least one occasion five CIA lawyers have tried to keep Raus from having to answer questions. The CIA has told the court: "When Juri Raus spoke concerning the plaintiff on the occasions about which complaint is made, he was acting within the scope and course of his employment by the Agency on behalf of the United States."

The CIA by the very nature of its activities

is prohibited from answering its critics or pointing with pride to its successes, which most certainly must have countervailed the boo-boos.

Attempts have been made in Congress to put a shorter rein on The Agency — the only government entity given automatic capital letters in Washington conversation. The answer invariably is that the House Armed Services CIA subcommittee and the corresponding subcommittee of the Senate Armed Services Committee each maintains intimate and careful surveillance of espionage and counter-espionage activities.

Spying is a dirty and embarrassing thing for a democracy, but the trial of the slander suit in Baltimore raises questions to try the most sensitive minds.

Even in a completely open society, should the individual's rights to a good reputation jeopardize, as the judge has said, "the entire U. S. counter-espionage apparatus?" On the other hand, should an admitted counter-spy—who didn't bring up his CIA affiliation until a year after the court action was brought — be allowed the complete shield of a government immune to legal processes?

These are good questions. A more practical one is, if Heine really is a Soviet agent, why hasn't he been arrested?

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The Washington Post

TUESDAY, MARCH 10, 1964

PAGE A16

AN INDEPENDENT PUBLICATION

Protecting Public Servants

The right of American citizens to discuss the conduct of public officials has been re-stated by the United States Supreme Court with great clarity and force in its majority and concurring opinions on the *Albany* case.

Justice Brennan's opinion for the full court put the case in a new perspective by declaring that the libel laws of the States had to be weighed against the national commitment to the principle that issues of public interest should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic and sometimes unpleasant attacks on government and public officials.

Justice Brennan's opinion precludes libel recovery by a public official unless he proves that the statement was made with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

Pointing out that no court of last resort in this country has ever upheld prosecutions for libel of government, the Court denies that there is any legal dichotomy by which a state party can accomplish the same thing.

The concurring opinion of Justice Black goes even further than the Brennan opinion to say that there is an "absolute, unconditional right" to publish such advertisements as that carried in *The New York Times*.

An opinion by Justice Goldberg, with Justice Douglas concurring, asserts that the First and Fourteenth Amendments confer an absolute, unconditional right to criticize the conduct of government officials. Justice Goldberg's opinion warns against the harm which may flow from excessive libel actions. Justice Goldberg's opinion warns against the harm which may flow from excessive libel actions.

The Supreme Court has given new expression to the intention of the authors of the Constitution in its interpretation of the conduct of government officials. In cases dealing with the asserting of this right through the advertising columns of newspapers and other publications, because of this circumstance an especially meaningful expression of the rights involved in the exercise of this right is exercised by an ordinary citizen. They are nonetheless meaningful and important for citizens who, on their own account, and for themselves, may wish or desire to express their own views through the newspapers or by other means. To these citizens the Supreme Court's position states their important right to be the recipients of views and information which are the product of opinion.

Citizens would receive very little information about the conduct of government officials if the reprisals for expressions of opinion were so summary as to destroy such publications. Where the punishment for libel is admitted to be in some amount, little will be said about government officials.

The right of citizens to comment on the acts of public officials is a right of publications to publish information and to be secure by the fundamental principles in the opinion of the Court.

Among the media which will be read with a new sense of responsibility, the system imposes upon the media and the media through which the information and the presentation of public affairs is made, so is the responsibility to the public with care and discretion.

WASHINGTON POST
2 JULY 1959

LRH
JU
DE BARR V MATTEO

two steel companies are preparing to sweep the
lunes away for an industrial site. The very least
Congress can do is to enact the modest legisla-
tion Mr. DeLoach is proposing to preserve these
Dunes from any total destruction.
Shorelines ought to be preserved for historical
as well as recreational reasons. Man will probably
never be able to duplicate the sweeping grandeur
of many shorelines. These areas should be pro-
tected from commercial exploitation so that succeeding
generations can enjoy them in their natural and
irreplaceable beauty.

Court on Free Expression

Freedom of expression appears to have
been expressed by several of the decisions handed
down by the Supreme Court on the last day of
its session. In the *WDAY* case the Court ruled
that broadcasters have no liability for defamatory
statements by political candidates using their
facilities during the "equal time" requirement laid
down by Congress. In the *Barr* and *Howard* cases
the Court decided that executive officials of the
Government acting in pursuit of their official
duties have an "absolute privilege" in defense
of a libel suit brought against them.
The *WDAY* decision will enable broadcasters
to give equal time to political candidates on radio
and television without fear of being held legally
responsible for any libel they may utter.
Federal Communications Act says specific
licensed broadcaster shall have no power of
censorship over the material broadcast under the
Act.

Farmers Educational and Cooperative Union of
North Dakota (FECU) because a candidate in the 1956 senatorial
race in North Dakota (A. C. Townley) to whom
WDAY had granted "equal time" accused the
union of engaging in a conspiracy to set up a
Communist Farmers Union Soviet in North
Dakota.

The controlling opinion by Justice Black makes
two important points: that broadcasters are not
to be held liable for libelous broadcasts for
the same reason that being unable to censor potentially
libelous statements, the broadcasters cannot
possibly be held responsible for what political
candidates may say. Both points seem to us fairly
reasonable. The majority consisting of Justices Frank-
furter, Harlan, Whitaker and Stewart agreed that
broadcasters may not censor broadcasts, but urged
in their dissenting opinions that they should
exercise their discretion.

less clear-cut, but the rule laid down by the ma-
jority may contribute something to free discus-
sion of governmental action. The Court had pre-
viously decided that judges and members of the
President's Cabinet cannot be sued for libel on
the basis of acts within their authority, and of
course the Constitution gives such immunity to
members of Congress. The obvious reason is to
avoid the frustration of governmental activity, and
to encourage vigorous administration of the law
by public servants. The Court has extended this
immunity to other policy-making officials on the
ground that in the end it is better to leave un-
redressed the wrongs done by dishonest officials
than to subject those who try to do their duty
to the constant dread of retaliation.

The argument that there is no essential differ-
ence between Cabinet officers and other high
policy-making officials in this regard is persuasive,
but the four judges for whom Justice Harlan spoke
admitted the question is a close one. Justice Black
concurred on separate grounds.